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May 16, 2008

VIA FACSIMILE

The Hon. William H. Pauley, III
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
Room 2210
New York, NY 10007

Re: Capitol Records, Inc. v. MP3tunes, LLC
No. 07 CIV 9931 (WHP)

Dear Judge Pauley:

Pursuant to paragraph 1(E) of Your Honor's Individual Practices, defendants MP3tunes LLC and Michael Robertson (collectively "MP3tunes") respectfully request that the Court reschedule the hearing on MP3tunes' Motion to Dismiss currently calendared for Friday May 23, 2008.

Greg Gulia will be unable to attend the hearing on May 23, 2008 as he must attend settlement negotiations in Berlin, Germany on May 22, 2008. We have been attempting to schedule this settlement negotiation between several international parties for the last few months without success. This week, all parties confirmed that they would all be available in Berlin on that date to attend the settlement meeting. We are respectful of Your Honor's time and do not make this request lightly. However, it was extremely difficult to schedule this meeting given the considerations of coordinating the schedules of multiple parties and the multiple international locations of each party. As such, we must respectfully request that the Court reschedule the hearing scheduled for Friday May 23, 2008 for either May 28, 29 or 30.

Plaintiffs argue that the Court should insist that co-counsel, Edward Cramp, argue the motion. While co-counsel Edward Cramp is available, the cost of flying Mr. Cramp out to New York, including two days of traveling plus hotel and other expenses is burdensome on MP3tunes, which is a small company with limited resources. More importantly, MP3tunes will be prejudiced if it is not allowed to have local counsel present at the hearing in order to present its case with full knowledge and understanding of the complexity and nuances of New York

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jurisdictional law. Conversely, moving the hearing date by a couple of days will not cause any prejudice to Plaintiffs.

We have met and conferred with counsel for Plaintiffs, who make the following objection:

Although Plaintiffs would ordinarily consent to Defendants' request as a matter of courtesy to Defendants' counsel, we cannot do so under these circumstances. The oral argument in this matter was set by this Court two months ago. Mr. Gulia apparently was fully available for the scheduled hearing until just this week when he scheduled a conflicting settlement meeting in another matter. Plaintiffs believe that it was inappropriate for Mr. Gulia to disregard this Court's schedule and create a competing obligation one week before the argument unless he ensured that another partner from his firm would handle the argument. In fact, Mr. Gulia's partner, Mr. Cramp, who defended all the depositions on the jurisdictional issue is available to handle the argument. However, Defendants do not want to incur the cost of having Mr. Cramp fly from San Diego to New York for the argument. In short, Defendants are saying that Mr. Gulia's other matter and Defendants' reluctance to incur the cost to have an equally prepared attorney handle the argument should take precedence over this Court's calendar. Plaintiffs disagree. It was Defendants' choice to staff this case with one New York lawyer and two San Diego lawyers. They cannot use this choice to circumvent their obligation to have a lawyer present in New York for the hearing. Accordingly, Plaintiffs believe the argument should proceed as scheduled.

Notwithstanding the foregoing, Plaintiffs will not press its objection if this Court is disposed to grant the request and has time available to hear the argument on Wednesday or Thursday of the following week (May 28 or 29). If the consequence of accommodating counsel's request is a longer delay, Plaintiffs must object to the adjournment of the Court ordered argument date.

This hearing has been rescheduled once before, in order to allow Plaintiffs additional time to conduct jurisdictional discovery and prepare their Opposition. We thank the Court for its consideration.

Respectfully submitted,



Michelle A. Hon

Application Granted. The Oral
Argument is adjourned to May 30,
2008 at 12:00 p.m.

SO ORDERED:



WILLIAM H. PAULEY III U.S.D.J.

5/19/08

MAH/sb

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cc via email Andrew Bart, Esq.
 Steven Fabrizio, Esq.
 Brian Hauck, Esq.
 Greg Gulia, Esq.
 Edward Cramp, Esq.